

When AT&T did not get its way from the FCC they said this

" AT&T Response to FCC Staff ReportPosted by: AT&T Blog Team on December 1, 2011 at 10:25 am

The following may be attributed to Jim Cicconi, AT&T Senior Executive Vice President of External & Legislative Affairs:

We expected that the AT&T-T-Mobile transaction would receive careful, considered, and fair analysis. Unfortunately, the preliminary FCC Staff Analysis offers none of that. The document is so obviously one-sided that any fair-minded person reading it is left with the clear impression that it is an advocacy piece, and not a considered analysis.

In our view, the report raises questions as to whether its authors were predisposed. The report cherry-picks facts to support its views, and ignores facts that don't. Where facts were lacking, the report speculates, with no basis, and then treats its own speculations as if they were fact. This is clearly not the fair and objective analysis to which any party is entitled, and which we have every right to expect.

All any company can properly ask when they present a matter to the government is a fair hearing and objective treatment based on factual findings. The FCC's report makes clear that neither occurred on our merger, at least within the pages of this report. This has not been our past experience with the agency, which lets us hope for and expect better in the future. Here are examples of what we are describing:

Expanding LTE to 97% of the U.S. Population

The report states, based purely on speculation, that AT&T will expand its LTE deployment from 80% of the population to 97.4% even without the merger. The report says this will occur because AT&T will be forced to do so by competition, despite documents and sworn declarations by AT&T to the contrary. To argue this, the report apparently assumes a high enough level of competition exists in rural areas to compel billions of dollars in investment. Yet the report elsewhere argues that the level of wireless competition in more populated areas of America is so fragile that the merger must be disallowed. At the very least, these conclusions show a logical inconsistency.

This discounting of AT&T's firm commitment on broadband deployment is even more inexplicable given that the President of the United States, in his 2011 State of the Union speech, said it was vital for the nation to deploy mobile broadband to 98% of all Americans. It appears the FCC did not inform the President that in their view this was not a needed or worthy objective because it was apparently

going to happen anyway.

The report also seemed to pay no mind to the FCC's own National Broadband Plan which called the building out of mobile broadband to rural areas a national imperative. Again, the report's argument is that rural buildout is not really an issue to be taken into account in our merger because it will occur anyway. This is at odds with virtually every FCC and Administration statement of the past year when it comes to rural buildout, and in our view demonstrates how far the report's authors were willing to go in order to ignore every single benefit of our merger with T-Mobile.

Job Gains Versus Losses

Because the report effectively concludes that the billions of additional investment promised by AT&T to deploy 4G LTE mobile broadband service to 55 million more Americans over the next six years will occur anyway, it concludes those billions will create no new jobs and spur no new investment by others. Yet, just two weeks ago the FCC announced that its new \$4.5 billion broadband fund, which will help to deploy wireline broadband to a much smaller number of Americans—7 million—over the same time period, will create “approximately 500,000 jobs and \$50 billion in economic growth over this period.” This notion “that government spending on broadband deployment creates jobs and economic growth, but private investment does not” makes no sense. Conversely, if the FCC had applied to its own broadband fund the same analysis it used for our merger-related investments, the result would be similar—zero new broadband, zero jobs, zero growth.

After discounting the job-creating impact of AT&T's LTE and other investments, the report asserts that the merger will cost jobs despite public commitments AT&T has made to address this very concern, including the following:

Commitment that the merger will not result in any job losses for U.S.-based wireless call center employees of T-Mobile or AT&T who are on the payroll when the merger closes;

Commitment to bring 5,000 wireless call center jobs back to the U.S. that today are outsourced to other countries;

Commitment that T-Mobile's non-management employees whose job functions are no longer required because of the merger will be offered another position in the combined company.

Deutsche Telekom, T-Mobile's Parent, Has Serious Investment Constraints

The report simultaneously discounts the capital investment necessary for AT&T to keep its commitment to build LTE to more than 97% of the U.S. population while speculating that T-Mobile will invest heavily in future years despite direct evidence, and sworn declarations by Deutsche Telekom, indicating that T-Mobile must develop into a self-funding platform due to extensive capital demands in Europe. T-Mobile has no clear path to LTE. Indeed, this path has become even more difficult over

the past several months due to explosive data demands on current network systems as well as the rapid pace of innovation and buildout of LTE by T-Mobile's competitors. By doing this, the report blatantly ignores facts, and instead substitutes speculation and hypotheticals ? treating them as if they were fact. Any fair person, however, knows the difference.

Spectrum

The FCC has made a national issue of the spectrum crisis the U.S. faces, and has made addressing this shortage the basis of its requests for incentive auction authority. Yet the report barely mentions any spectrum issue, much less the spectrum crisis previously identified by the FCC, although that is the primary reason driving AT&T's need for this merger. The report seems to discount the significant spectrum constraints faced by AT&T, including an 8,000% increase in data traffic on our network over the past four years, even though we have submitted volumes of evidence documenting these constraints.

In addition, the report claims "the record is silent" with respect to capacity constraints faced by T-Mobile, even though Deutsche Telekom submitted a sworn declaration explaining those constraints. Deutsche Telekom also noted that the volume of data traffic on T-Mobile's network has doubled every seven months, with 4G device customers using more than 1 gigabyte of data per month on average. In short, the report's authors find this evidence inconvenient, and simply claim it does not exist.

Surely, it is neither fair nor logical for the FCC to trumpet a national spectrum crisis for much of the past year, and then draft a report claiming that two major wireless companies face no such constraints despite sworn declarations demonstrating the opposite.

The report also claims the AT&T-T-Mobile transaction would result in an increase in spectrum concentration that is unprecedented in its scale. This is simply inaccurate based on the FCC's own published data, which clearly shows that Sprint-Clearwire has more spectrum today than the combined company would have post-merger. Again, the report manipulates its own spectrum data to support its preferred conclusion.

Competition

The report's competitive analysis willfully ignores critical facts about the wireless market, and distorts the evidence presented. A few of the many examples:

The report acknowledges that in past transactions the FCC has said the market for mobile wireless services is local, and repeated that conclusion in its Mobile Competition Report issued this year. Now,

though, the report's authors have concluded it was "not necessary" to assess the impact of the merger in local markets, effectively ignoring competition from, among others, U.S. Cellular, Leap, and Metro PCS, all of which have a higher market share than T-Mobile in numerous major markets across the U.S.

The FCC's Mobile Competition Report this year concluded that 90% of all Americans have a choice of five or more facilities-based wireless carriers, not including competition from resale providers. Yet the draft report on our merger dismisses the significance of the FCC's own official finding in assessing the competitive impact of our merger.

The report understates the spectrum holdings of regional providers. Instead of showing their average spectrum holdings in the markets they serve, the report calculates their average holdings across all markets including markets they don't serve. This creates the false impression that regional carriers have insufficient spectrum to serve customers in the markets in which they operate. This is an obvious attempt to manipulate data to support the report's conclusion.

The report hinges its analysis on its characterization of T-Mobile as a critical "disruptive force" in the industry. But it fails even to mention that for the past two years T-Mobile has been losing customers despite growing demand across the industry; it has no clear path to building an LTE network; and that its parent company, Deutsche Telekom, has said T-Mobile will have to become self-funding. This failing is magnified when one considers that the report treats companies such as Leap and Metro PCS, which have gained market share over this same time period, as though they do not even exist. The report finds that the loss of T-Mobile as an independent purchaser of backhaul could lessen competition in the provision of backhaul. The Justice Department did not even see fit to include this claim in its lawsuit and, when raised by Sprint, it was dismissed by the U.S. District Court as unsupported by any facts. Amazingly, the report does not even acknowledge evidence in the record that just last month Sprint announced that it had awarded backhaul contracts at 25,000 cell sites and "will end up with 25 to 30 significant backhaul providers" and that "it could still build its own backhaul facilities," if necessary. Further, just months ago the FCC concluded, in its separate special access proceeding, that it had insufficient data about available services, numbers of competitors or pricing to reach any conclusions. Yet somehow, the draft report was uninhibited by that same lack of data in supporting Sprint's contentions that the loss of T-Mobile as a purchaser of backhaul affects Sprint's ability to obtain backhaul from the 25-30 sellers of backhaul capabilities with whom Sprint has independently contracted for services.

Conclusion

We have summarized here only a portion of the infirmities we see in the FCC's report. We would encourage all observers to read the report itself. We believe that the utter absence of balance is clear, and demonstrates that the document lacks all credibility. The decision to issue such a report that has no legal status, without a vote of the Commission, and in a proceeding that has been withdrawn, was also without precedent, and underscores that this was intended more for advocacy and to impact public perceptions. And neither is a proper basis for action by a regulatory agency.

If our economy is to recover and once again create jobs, major private-sector investment will be required. Over the past several years, no company has invested more in the United States than AT&T. In our merger with T-Mobile, we made commitments to invest additional billions?investments made possible because of the merger. We also face spectrum constraints of a nature and magnitude faced by no other carrier as we strive to provide services everyone concedes are vital. In this circumstance, we understood the issues such a combination might raise, and we made clear, publicly and privately, our readiness to address those concerns. We are still ready to do so".

And now if the deal does not happen ATT will do this-

"Chief Executive Officer Randall Stephenson said the blocking of the company?s proposed \$39 billion purchase of T-Mobile USA Inc. by regulators will lead to higher prices for consumers.

Without T-Mobile, AT&T?s capacity is constrained, Stephenson said last night at an event in New York. Congress has an ill-formed regulatory policy when it comes to wireless carriers, he said.

?Regulators can?t keep up with the changes in the industry,? Stephenson said at a Captains of Industry interview series with Bloomberg News Chief Content Officer Norman Pearlstine at the 92nd Street Y in New York.

The Federal Communications Commission said in a report last month that AT&T had failed to demonstrate the public benefits of the deal, that the purchase of T-Mobile would cause significant job losses and that AT&T would probably build high-speed wireless Internet connections without the merger.

The FCC let Dallas-based AT&T withdraw its application to buy T-Mobile, a deal that would combine the second- and fourth- largest U.S. wireless carriers. The Justice Department sued in August to block the merger as anti-competitive, and a court date is set for February.

The application withdrawal leaves open the possibility that AT&T may again approach the commission with a revised deal, FCC officials have said. Before the report, analysts had said that to gain approval, AT&T might have to give up half of T-Mobile?s customers to ease antitrust concerns and gain control of assets including wireless spectrum.

So ATT will not take the money they saved by not buying T-Mobile to fix there network. They will rise prices the same way as if they did buy T-Mobile

